

03630.000240.

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
	:	Examiner: D. Jung
CRAIG MAZZAGATTE, et al.	)	
	:	Group Art Unit: 2134
Application No.: 09/747,097	)	
	:	
Filed: December 22, 2000	)	
	:	
For: OBTAINING TEMPORARY	)	
EXCLUSIVE CONTROL OF	:	
A PRINTING DEVICE	)	February 28, 2007

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

PETITION TO WITHDRAW ERRONEOUS ABANDONMENT

Sir:

Applicants have received a Notice of Abandonment dated January 30, 2007, which as set forth below, has been issued erroneously since the application has not been abandoned and the Notice was issued due to mistakes by the Patent Office.

As a brief procedural history leading up to the Notice of Abandonment, Applicants submit the following. A Non-Final Office Action was mailed on May 23, 2005. On August 19, 2005, Applicants filed an Amendment in response to the Non-Final Office Action. Inexplicably, the Examiner issued an Advisory Action on September 26, 2005 in response to the Amendment to the Non-Final Office Action. In addition, the Image File Wrapper for the application includes an entry dated September 26, 2005 for "Amendment

After Final Rejection, initialed by examiner.” This entry is also erroneous since the Amendment filed on August 19, 2005 was not an Amendment After Final Rejection, but rather was an Amendment in response to a Non-Final Office Action. Applicants then filed a Response to the erroneously issued Advisory Action pointing out the PTO errors and requesting that the Advisory be withdrawn and an action on the merits for the August 19, 2005 Amendment. No such action, however, was taken by the Examiner or the Office.

Applicants undersigned representative telephoned the Examiner on September 22, 2006 requesting a status of the case. The Examiner stated that he was unable to fix the PTO errors in the IFW and suggested that Applicants’ undersigned representative contact the Patent Office’s Electronic Business Center. On that same day, Applicants’ undersigned representative telephoned the EBC help desk and pointed out the PTO’s errors. The EBC requested that the Applicants’ undersigned representative provide the request for correction in writing and to send the request via email to the EBC. Applicants’ undersigned representative did so on September 22, 2006. A copy of the email transmission is attached hereto.

On February 28, 2007, after having received the erroneously issued Notice of Abandonment, Applicants’ undersigned representative again contacted the EBC since the PTO error in the Image File Wrapper has not yet been corrected. The EBC informed Applicants’ undersigned representative that the source of the PTO error appears to be an erroneous entry by PTO personnel in the PTO database that the May 23, 2005 Office Action was “final” rather than “non-final”, even though the document description included in PAIR was entered correctly as a “Non-Final Rejection”. The EBC informed Applicants’

undersigned representative that the issue would be raised to the proper office with the PTO to correct the erroneous “final” designation so that the Examiner may act on the case.

In the Notice of Abandonment, the Examiner notes: “While Applicant correctly identified the origin of the problem as an IFW error, Applicant has not yet properly addressed this issue by contacting the proper authority regarding IFW (not Examining Branch).” However, as can readily be seen on the attached copy of the September 22, 2006 email to the EBC, the Examiner was included as a recipient as a “cc””. Thus, the Examiner’s reasons for issuing the Notice are also erroneous.

It is quite clear that Applicants’ have not abandoned the application, but that a PTO error, which has resulted in a more than 18 month delay in prosecution of the application, is the reason for the issuance of the erroneous Notice of Abandonment. Applicants therefore request that the Notice of Abandonment be withdrawn, that the case be restored to pending status, and that an action on the merits for the August 19, 2005 Amendment be issued.

No fee is believed to be due for this Petition. However, should a fee be deemed necessary, it should be charged to Deposit Account No. 50-3939.

Applicants' undersigned attorney may be reached in our Costa Mesa,  
California office at (714) 540-8700. All correspondence should continue to be directed to  
our below-listed address.

Respectfully submitted,

/Edward Kmett/

---

Attorney for Applicants  
Edward A. Kmett  
Registration No.: 42,746

FITZPATRICK, CELLA, HARPER & SCINTO  
30 Rockefeller Plaza  
New York, New York 10112-2200  
Facsimile: (212) 218-2200

CA\_MAIN 128446v1

**Kmett,Edward**

---

**From:** Kmett,Edward  
**Sent:** Friday, September 22, 2006 11:21 AM  
**To:** 'ebc@uspto.gov'  
**Cc:** 'david.jung@uspto.gov'  
**Subject:** 09/747,097

Dear EBC:

Please correct the following erroneous entries in the Image File Wrapper/PAIR system for application number 09/747,097. A **non-final** rejection was issued on May 23, 2005 (this entry is correct in the IFW).

On August 19, 2005, applicants filed an Amendment in response to the foregoing non-final rejection. The Amendment was erroneously entered in IFW/PAIR as an "Amendment After Final" instead of an "Amendment After Non-final". Please correct this entry.

Because of the foregoing erroneous entry, the Examiner erroneously issued an Advisory Action. Since the case was under a non-final rejection, the Advisory Action should not have been issued.

On October 4, 2005, Applicants filed a response to the erroneously issued Advisory Action.

To date, no further action has been taken by the Office on this case. I have contacted the Examiner, who says he cannot do anything until the IFW/PAIR or PALM system is corrected. It has now been more than a year since Applicants filed the Amendment, but the Examiner has not yet taken up action on that Amendment.

Please correct the following and advise the Examiner so he can act on this case.

Edward Kmett  
Reg. No. 42,746

**Edward A. Kmett**  
**FITZPATRICK, CELLA, HARPER & SCINTO**  
650 Town Center Drive, Suite #1600  
Costa Mesa, CA 92626  
tel/ (714) 540-6824  
fax/ (714) 540-9823  
e-mail/ [ekmett@fchs.com](mailto:ekmett@fchs.com) <<mailto:ekmett@fchs.com>>  
<<http://www.fitzpatrickcella.com/>>

9/22/2006